

109TH CONGRESS
1ST SESSION

S. 232

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2005

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 As used in this Act—

5 (1) “Secretary” means the Secretary of the In-
6 terior, acting through the Commissioner of Reclama-
7 tion;

1 (2) “Reclamation” means the Bureau of Rec-
2 lamation, United States Department of the Interior;

3 (3) “Fish passage and screening facilities”
4 means ladders, collection devices, and all other kinds
5 of facilities which enable fish to pass through, over,
6 or around water diversion structures; facilities and
7 other constructed works which modify, consolidate,
8 or replace water diversion structures in order to
9 achieve fish passage; screens and other devices which
10 reduce or prevent entrainment and impingement of
11 fish in a water diversion, delivery, or distribution
12 system; and any other facilities, projects, or con-
13 structed works or strategies which are designed to
14 provide for or improve fish passage while maintain-
15 ing water deliveries and to reduce or prevent en-
16 trainment and impingement of fish in a water stor-
17 age, diversion, delivery, or distribution system of a
18 water project;

19 (4) “Federal reclamation project” means a
20 water resources development project constructed, op-
21 erated, and maintained pursuant to the Reclamation
22 Act of 1902 (32 Stat. 388), and acts amendatory
23 thereof and supplementary thereto;

24 (5) “Non-Federal party” means any non-Fed-
25 eral party, including federally recognized Indian

1 tribes, non-Federal governmental and quasi-govern-
2 mental entities, private entities (both profit and non-
3 profit organizations), and private individuals;

4 (6) “Snake River Basin” means the entire
5 drainage area of the Snake River, including all trib-
6 utaries, from the headwaters to the confluence of the
7 Snake River with the Columbia River;

8 (7) “Columbia River Basin” means the entire
9 drainage area of the Columbia River located in the
10 United States, including all tributaries, from the
11 headwaters to the Columbia River estuary; and

12 (8) “Habitat improvements” means work to im-
13 prove habitat for aquatic plants and animals within
14 a currently existing stream channel below the ordi-
15 nary high water mark, including stream reconfigura-
16 tion to rehabilitate and protect the natural function
17 of streambeds, and riverine wetland construction and
18 protection.

19 **SEC. 2. AUTHORIZATION.**

20 (a) IN GENERAL.—Subject to the requirements of
21 this Act, the Secretary is authorized to plan, design, and
22 construct, or provide financial assistance to non-Federal
23 parties to plan, design, and construct, fish passage and
24 screening facilities or habitat improvements at any non-
25 Federal water diversion or storage project located any-

1 where in the Columbia River Basin when the Secretary
2 determines that such facilities would enable Reclamation
3 to meet its obligations under section 7(a)(2) of the Endan-
4 gered Species Act of 1973 (16 U.S.C. 1536(a)(2)) regard-
5 ing the construction and continued operation and mainte-
6 nance of all Federal reclamation projects located in the
7 Columbia River Basin, excluding the Federal reclamation
8 projects located in the Snake River Basin.

9 (b) PROHIBITION OF ACQUISITION OF LAND FOR
10 HABITAT IMPROVEMENTS.—Notwithstanding subsection
11 (a), nothing in this Act authorizes the acquisition of land
12 for habitat improvements.

13 **SEC. 3. LIMITATIONS.**

14 (a) WRITTEN AGREEMENT.—The Secretary may un-
15 dertake the construction of, or provide financial assistance
16 covering the cost to the non-Federal parties to construct,
17 fish passage and screening facilities at non-Federal water
18 diversion and storage projects or habitat improvements lo-
19 cated anywhere in the Columbia River Basin only after
20 entering into a voluntary, written agreement with the non-
21 Federal party or parties who own, operate, or maintain
22 the project, or any associated lands involved.

23 (b) FEDERAL SHARE.—The Federal share of the
24 total costs of constructing the fish passage and screening

1 facility or habitat improvements shall be not more than
2 75 percent.

3 (c) NON-FEDERAL SHARE.—

4 (1) Except as provided in paragraph (4), a
5 written agreement entered into under subsection (a)
6 shall provide that the non-Federal party agrees to
7 pay the non-Federal share of the total costs of con-
8 structing the fish passage and screening facility or
9 habitat improvements.

10 (2) The non-Federal share may be provided in
11 the form of cash or in-kind services.

12 (3) The Secretary shall—

13 (A) require the non-Federal party to pro-
14 vide appropriate documentation of any in-kind
15 services provided; and

16 (B) determine the value of the in-kind
17 services.

18 (4) The requirements of this subsection shall
19 not apply to Indian tribes.

20 (d) GRANT AND COOPERATIVE AGREEMENTS.—Any
21 financial assistance made available pursuant to this Act
22 shall be provided through grant agreements or cooperative
23 agreements entered into pursuant to and in compliance
24 with chapter 63 of title 31, United States Code.

1 (e) TERMS AND CONDITIONS.—The Secretary may
 2 require such terms and conditions as will ensure perform-
 3 ance by the non-Federal party, protect the Federal invest-
 4 ment in fish passage and screening facilities or habitat im-
 5 provements, define the obligations of the Secretary and
 6 the non-Federal party, and ensure compliance with this
 7 Act and all other applicable Federal, State, and local laws.

8 (f) RIGHTS AND DUTIES OF NON-FEDERAL PAR-
 9 TIES.—All right and title to, and interest in, any fish pas-
 10 sage and screening facilities constructed or funded pursu-
 11 ant to the authority of this Act shall be held by the non-
 12 Federal party or parties who own, operate, and maintain
 13 the non-Federal water diversion and storage project, and
 14 any associated lands, involved. The operation, mainte-
 15 nance, and replacement of such facilities shall be the sole
 16 responsibility of such party or parties and shall not be a
 17 project cost assignable to any Federal reclamation project.

18 **SEC. 4. OTHER REQUIREMENTS.**

19 (a) PERMITS.—The Secretary may assist a non-Fed-
 20 eral party who owns, operates, or maintains a non-Federal
 21 water diversion or storage project, and any associated
 22 lands, to obtain and comply with any required State, local,
 23 or tribal permits.

24 (b) FEDERAL LAW.—In carrying out this Act, the
 25 Secretary shall be subject to all Federal laws applicable

1 to activities associated with the construction of a fish pas-
2 sage and screening facility or habitat improvements.

3 (c) STATE WATER LAW.—

4 (1) In carrying out this Act, the Secretary shall
5 comply with any applicable State water laws.

6 (2) Nothing in this Act affects any water or
7 water-related right of a State, an Indian tribe, or
8 any other entity or person.

9 (d) REQUIRED COORDINATION.—The Secretary shall
10 coordinate with the Northwest Power and Conservation
11 Council; appropriate agencies of the States of Idaho, Or-
12 egon, and Washington; and appropriate federally recog-
13 nized Indian tribes in carrying out the program authorized
14 by this Act.

15 **SEC. 5. INAPPLICABILITY OF FEDERAL RECLAMATION LAW.**

16 (a) IN GENERAL.—The Reclamation Act of 1902 (32
17 Stat. 388), and Acts amendatory thereof and supple-
18 mentary thereto, shall not apply to the non-Federal water
19 projects at which the fish passage and screening facilities
20 authorized by this Act are located, nor to the lands which
21 such projects irrigate.

22 (b) NONREIMBURSABLE AND NONRETURNABLE EX-
23 PENDITURES.—Notwithstanding any provision of law to
24 the contrary, the expenditures made by the Secretary pur-
25 suant to this Act shall not be a project cost assignable

1 to any Federal reclamation project (either as a construc-
2 tion cost or as an operation and maintenance cost) and
3 shall be non-reimbursable and non-returnable to the
4 United States Treasury.

5 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated such
7 amounts as are necessary for the purposes of this Act.

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